

1  
2  
3  
4 BILL NO. S-72-12-33

5 SPECIAL ORDINANCE NO. S- 93-72

6 AN ORDINANCE approving a contract with  
7 SHIRMEYER ASSOCIATES, INC. for construc-  
8 tion of a Sanitary Sewer in the area of  
9 Winchester and Dunkelberg Roads.

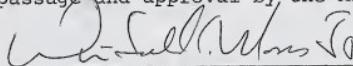
10 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT  
11 WAYNE, INDIANA:

12 SECTION 1. The contract approved December 5, 1972,  
13 between the City of Fort Wayne, by and through its Mayor and the  
14 Board of Public Works, and SHIRMEYER ASSOCIATES, INC. for the  
15 construction of a Sanitary Sewer Resolution Nos. 116-72 and 117-  
16 72 in the area of Winchester and Dunkelberg Roads, as follows:

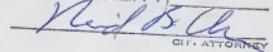
17 Commencing at an existing manhole at Station 43 + 33  
18 on the St. Mary's Interceptor Sewer, Resolution No. 214;  
19 thence meandering Westwardly in and along a proposed  
20 15 foot easement 1,383 $\frac{1}{2}$  feet to the West right-of-way  
21 of Winchester Road; thence, Southeasterly in and along  
22 the Winchester Road a distance of 105 $\frac{1}{2}$  feet to Manhole  
23 No. 7; thence Southwesterly in a meandering easement  
24 a distance of 665 $\frac{1}{2}$  feet to the centerline of Midway  
25 and the Northeast line of Lot No. 6 extended Northerly  
in Winchester Heights Addition; thence, in and along  
a proposed easement a distance of 1,280 $\frac{1}{2}$  feet to the  
intersection of Dunkelberg Road; thence, Southeasterly  
a distance of 240 $\frac{1}{2}$  feet terminating at a proposed  
manhole in proposed Pheasant Run Addition.

26 for a total cost of \$53,750.00, at no cost to the City, all as  
27 more particularly set forth in said contract, which contract is  
on file in the office of the Board of Public Works, and is by  
reference incorporated herein and made a part hereof, is hereby  
in all things ratified, confirmed and approved.

28 SECTION 2. This Ordinance shall be in full force and  
29 effect from and after its passage and approval by the Mayor.  
30

  
\_\_\_\_\_  
31 Councilman

32 APPROVED AS TO FORM  
33 AND LEGALITY,  
34

  
\_\_\_\_\_  
35 CITY ATTORNEY

Read the first time in full and on motion by \_\_\_\_\_ seconded by \_\_\_\_\_ and duly adopted, read the second time by title and referred to the Committee on \_\_\_\_\_ (and to the City Plan Commission for recommendation) (and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: \_\_\_\_\_ CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_ Moses seconded by \_\_\_\_\_ Stier and duly adopted, placed on its passage.

Passed (Yeas) by the following vote:

AYES 8, NAYS 0, ABSTAINED \_\_\_\_\_, ABSENT 1 to-wit:

Burns	<u>✓</u>	_____	_____	_____
Hinga	_____	_____	_____	<u>X</u>
Kraus	<u>✓</u>	_____	_____	_____
Nuckols	<u>✓</u>	_____	_____	_____
Moses	<u>✓</u>	_____	_____	_____
Schmidt, D.	<u>✓</u>	_____	_____	_____
Schmidt, V.	<u>✓</u>	_____	_____	_____
Stier	<u>✓</u>	_____	_____	_____
Talarico	<u>✓</u>	_____	_____	_____

Date 12/12/72 Charles W Westerman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana as Zoning Map (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. A-73-72 on the 12th day of December, 1972.

ATTEST: (SEAL)

Charles W Westerman John M  
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of December, 1972 at the hour of 10:00 o'clock A.M., E.S.T.

Charles W Westerman  
CITY CLERK

Approved and signed by me this 13th day of December, 1972 at the hour of 1:00 o'clock P.m., E.S.T.

Don A. Leonard Jr  
MAYOR

SUSPENSION OF RULES

BILL NO. S-72-12-33

Councilman W. Moses, moved to suspend the rules on passage of BILL NO. A-72-12-33, at this meeting of 12-12-72, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman J. Stier, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and A-93-72 ORDINANCE was accordingly placed on its passage.

DATE: 12-12-72

PRESIDING OFFICER	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>BURNS</u>	✓	—	—	—	—
<u>HINGA</u>	—	—	—	X	—
<u>KRAUS</u>	✓	—	—	—	—
<u>NUCKOLS</u>	✓	—	—	—	—
<u>MOSES</u>	✓	—	—	—	—
<u>D. SCHMIDT</u>	✓	—	—	—	—
<u>V. SCHMIDT</u>	✓	—	—	—	—
<u>STIER</u>	✓	—	—	—	—
<u>TALARICO</u>	✓	—	—	—	—

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Special Ord. No - A-93-72  
ATTEST:

(SEAL)

DATE: 12/12/72

Charles W. Westerman  
CITY CLERK

A G R E E M E N T  
F O R  
S A N I T A R Y S E W E R E X T E N S I O N

THIS AGREEMENT, made in triplicate this 4th day of December, 1972, by and between Shirmeyer Associates, Inc., hereinafter referred to as "DEVELOPER", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, the DEVELOPER desired to construct a sanitary sewer described as follows:

Commencing at an existing manhole at Station 43 + 33 on the St. Mary's Interceptor Sewer, Resolution No. 214; thence, meandering Westwardly in and along a proposed 15 foot easement 1,383 ± feet to the West right-of-way of Winchester Road; thence, Southeasterly in and along the Winchester Road a distance of 105 ± feet to Manhole No. 7; thence, Southwesterly in a meandering easement a distance of 665 ± feet to the center-line of Midway and the Northeast Line of Lot No. 6 extended Northerly in Winchester Heights Addition; thence, in and along a proposed easement a distance of 1,280 ± feet to the intersection of Dunkelberg Road; thence, Southeasterly a distance of 240 ± feet terminating at a proposed manhole in proposed Pheasant Run Addition.

in accordance with plans, specifications and profiles heretofore submitted to the CITY and now on file in the office of the Chief Engineer of the Water Pollution Control Engineering Department of the CITY, and known as PHEASANT RUN OFFSITE SANITARY SEWER which plans, specifications, profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the DEVELOPER has an interest, but also adjoining land areas.

WHEREAS, the cost of the construction of said sewer is represented to be \$53,750.00, composed of \$47,750.00 for construction costs; \$6,000.00 for engineering and inspection services.

WHEREAS, the CITY is condemning the necessary easement right-of-way for the installation of the sewer under Sewer Easement Resolution Nos. 116-72 and 117-72.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The DEVELOPER shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the CITY, under private contract with CITY approval. All work and materials shall be inspected by the CITY and conform with all CITY standards and specifications. Upon completion, said sewer

shall become the property of CITY and all further maintenance thereafter shall be borne by the CITY.

## 2. COST OF CONSTRUCTION

The DEVELOPER agrees to pay the entire cost and expense of construction of said sewer, in cash, including CITY engineering and inspection fees, and to hold the CITY harmless from any liability for claims connected therewith.

## 3. AREA OF DEVELOPER

Said sewer, when accepted by the CITY, will serve the following described real estate:

Part of Richardville Reserve lying West of the St. Mary's River in Township 29 North, Range 12 East in Allen County, Indiana, more particularly described as follows:

Beginning at the South corner of Richardville Reserve; thence, North 24 degrees 45 minutes East and along the Southeast line of the Richardville Reserve a distance of 717.5 feet; thence, North 16 degrees 18 minutes West a distance of 2,419 feet to an iron pipe in the centerline of Dunkelberg Road, said pipe being the Northwest corner of property owned by the Fort Wayne Community School Building Corporation; thence, South 87 degrees 26 minutes West along the centerline of Dunkelberg Road a distance of 1,578.4 feet to the Southwest line of the Richardville Reserve; thence, South 34 degrees 00 minutes East along the Southwest line of Richardville Reserve a distance of 3,500.4 feet to the point of beginning, containing 67.21 acres more or less and subject to road rights-of-way and easements.

Also, part of Section 2, Township 29 North, Range 12 East in Allen County, Indiana, more particularly described as follows:

Beginning at a point on the West line of Section 2, Township 29 North, Range 12 East in Allen County, Indiana, said point being 1,794 feet North of the Southwest corner of Section 2-29-12; thence, North along the West line of Section 2-29-12 a distance of 2,755.26 feet to the Northwest corner of Section 2-29-12; thence, East along the North line of Section 2-29-12 a distance of 163.68 feet to the Southwest line of the Richardville Reserve; thence, Southeasterly along the Southwest line of the Richardville Reserve a distance of 3,273.4 feet to an existing E-W fence; thence, Westerly along the E-W fence a distance of 1,918.52 feet to the point of beginning containing 65.88 acres more or less and subject to road rights-of-way and easements.

As the DEVELOPER will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard monthly service charges, tap-in and inspection fees, and/or charges (as described on Page 3 herein) as are customarily charged by the CITY for connections to CITY sewer mains.

## 4. CHARGE AGAINST EXCESS AREA

Said sewer, when constructed, will also serve the additional or excess area in parts of the Southwest  $\frac{1}{4}$  of Section 35, Township 30 North, Range 12 East (Richardville Reserve) and parts of the Southeast  $\frac{1}{4}$  of Section 35, Township 30 North,

Range 12 East, bounded on the East by the St. Mary's River, on the South by Dunkelberg Road, on the West by Kinnerk Road, as shown on attached EXHIBIT "A".

In the event any present or future owner of said described excess area shall at any time within fifteen (15) years after the date of this contract, desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land; CITY, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to CITY in addition to the cost of standard tap-in and inspection fees, the sum of Two Hundred Eighteen Dollars and Ninety-Eight Cents (\$218.98) per acre for the area served by each such connection and use, which represents the fair share of the cost of the extension of CITY sewer to said excess area. Exhibit "A", showing properties in excess area subject to charge for construction and use of sewer as of this date is attached.

It is hereby acknowledged that CITY is cooperating in this sewer construction by obtaining easements through condemnation (Sewer Easement Resolution Nos. 116-72 and 117-72). DEVELOPER agrees that any damages occurred by CITY in connection with said easement condemnation shall be reimbursed to CITY by CITY retaining connection fees due DEVELOPER under this contract in amounts equal to damages. When amount equal to damages has been retained by CITY, DEVELOPER shall receive all other amounts so collected by the CITY within sixty (60) days of the receipt thereof by CITY.

An area connection charge of \$442.73 per acre must also be paid to the CITY at the time of connection. This connection charge is in addition to any other charge as set forth above and represents the oversizing cost expended by the City Utilities and the School City for sewer line pertaining to St. Mary's Interceptor, Resolution No. 214, as recorded in Instrument 71-05984 in the Recorder's Office in Allen County, Indiana.

#### 5. BOND

This contract is subject to DEVELOPER furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the CITY.

#### 6. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The DEVELOPER, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate

against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce CITY to execute and ratify this contract, said DEVELOPER, for himself, his successors and assigns, agrees by this contract to vest in CITY the permanent right at its discretion to annex to the CITY OF FORT WAYNE at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

DEVELOPER further agrees that any deeds, contract, or other instruments of conveyance made by the DEVELOPER, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the DEVELOPER, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The DEVELOPER further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of CITY as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of CITY who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of such land or of the territory in which it is located or of the area served by said sewer.

#### 7. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (Burns Indiana Statutes Anno., 1968 supple., Sections 48-3963, 3964 and 3965), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

#### 8. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of CITY, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER:

Ivan Lebamoff  
Shirmeyer Associates, Inc.

CITY OF FORT WAYNE, INDIANA

By Ivan Lebamoff  
(Ivan Lebamoff) Mayor

BOARD OF PUBLIC WORKS

By Jerry D. Boswell  
Jerry D. Boswell, Chairman  
By Ronald L. Bonar  
Ronald L. Bonar, Member

By William G. Williams, Member

ATTEST:

Caron J. Smith  
Clerk

Approved as to form and legality

John H. Logan  
Associate City Attorney

STATE OF INDIANA, COUNTY OF ALLEN, SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ivan Lebamoff, Mayor, Jerry D. Boswell, Chairman, Ronald L. Bonar and William C. Williams, Members of Board of Public Works, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 5th day of December, 1972

Anne J. Fox  
My Commission Expires:  
March 6, 1976

STATE OF INDIANA, COUNTY OF ALLEN, SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Shirmeyer Associates, Inc., who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 4th day of December, 1972.



Audrey J. Hogan

My Commission Expires:

February 22, 1975

This Instrument prepared by Philip R. Boller, Registered Land Surveyor No. 9846,  
State of Indiana.

## SCHEDULE 1

Cost Per Acre:

\$47,750.00	Cost of Construction
<u>\$ 6,000.00</u>	Cost of Engineering and Inspection
<u><u>\$53,750.00</u></u>	Total Cost

<u><u>\$53,750.00</u></u>	Total Cost	= \$218.976615334 Cost Per Acre
245.46	Acres Service Area	Rounded to \$218.98

Cost Per Tract\*:

<u>Tract*</u>	<u>Acres**</u>	<u>Rate</u>	<u>Tract Cost</u>	<u>Tract Owner</u>
A	12.80 Acres	Excess Area x \$218.98	=\$2,802.94	Lebrato, Jos. J. et al
B	7.00 "	" " "	=\$1,532.86	Trinity Episcopal Church
C	18.00 "	" " "	=\$3,941.64	Wyss, Arthur N. & M. Gertrud
D	11.20 "	" " "	=\$2,452.58	Wyss, Arthur N. & M. Gertrud
E	3.00 "	" " "	=\$ 656.94	Whitsel, G. L. Jr. & M. M.
F	3.00 "	" " "	=\$ 656.94	Wright, Johnny & G.
G	3.00 "	" " "	=\$ 656.94	Alter, Elsie E.
H	2.00 "	" " "	=\$ 437.96	Pletcher, Howard R. & M.
I	0.90 "	" " "	=\$ 197.08	Beck, Lowell O. & M. S.
J	5.60 "	" " "	=\$1,226.29	Del Priore, D. A. & M. G.
K	4.41 "	" " "	=\$ 965.70	Klingler, Karl J. & M. E.
L	17.00 "	" " "	=\$3,722.66	Klingler, Karl J. & M. E.
M	15.19 "	" " "	=\$3,326.31	Ray, Francis H. & K. D.
N	9.27 "	" " "	=\$2,029.95	Klingler, K. J. Jr. & M. E.
O	67.21 "	" " "	=\$14,426.40	Developer
P	<u>65.88</u>	" " "	<u>=\$14,717.65</u>	Developer
	<u>245.46</u>	Totals	<u>\$53,750.83</u>	

\* Per Exhibit "A"

\*\* Acres taken from township maps may call for adjustment

Cost due St. Mary's Interceptor, Resolution No. 214, as before mentioned in the amount of \$442.73, must be added to the above cost prior to the issuance of a tap permit.

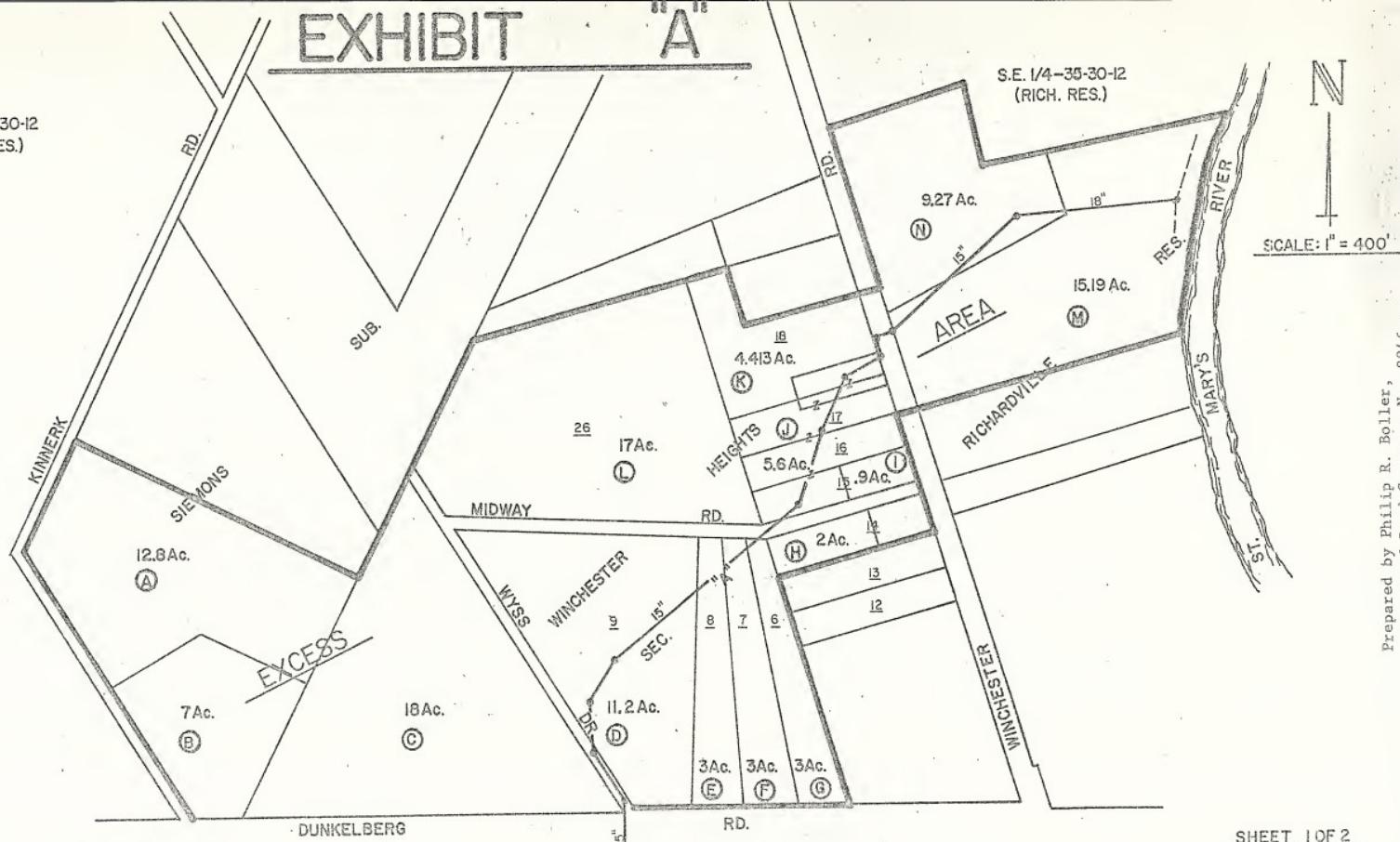
Example:

12.80 Acres x \$218.98 = \$2,802.94	Cost of this Contract
12.80 Acres x \$442.73 = \$5,666.94	Resolution No. 214
<u>\$8,469.88</u>	Total

# EXHIBIT

68

S.W. 1/4-35-30-12  
(RICH. RES.)



**NOTE:**

THE ACRES SHOWN ON EXHIBIT "A" WERE IN MOST PART TAKEN FROM THE QUARTER SECTION MAPS OF THE RESPECTIVE TOWNSHIPS.

SHEET 1 OF 2

DUNKELBERG

ROAD

2-29-12  
(RICH. RES.)

# EXHIBIT A

ROAD

RICHARDVILLE

AREA OF

DEVELOPER

65.88 Ac.

(P)

67.21 Ac.

(S)

KINNERK

RESERVE

15'

WINCHESTER

ZZ

SCALE: 1" = 400'

THIELE ROAD  
ROAD

DIGEST SHEETTITLE OF ORDINANCE Special OrdinanceDEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE Special Sewer Agreement between City of Fort Wayne and Shirmeyer Association, Inc. permitting the continuation of sanitary sewer in the area of Winchester & Dunkelberg Roads. Sanitary sewer construction is to be done by Shirmeyer with no cost to the City. The proposed sewer is a gravity system which will provide maintenance-free operations as compared to a lift station force main originally considered by the developer.

EFFECT OF PASSAGE Will allow for orderly growth and development of the Fort Wayne W.P.C. Utility system and for the future development of the area by providing sanitary sewers to Pheasant Run and other areas.

EFFECT OF NON-PASSAGE Would stymie growth and development and curtail expansion of the W.P.C. sewer system.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) No cost to the City.

ASSIGNED TO COMMITTEE (J.N.)

## ORDINANCE CHECK-OFF SHEET

## INFORMATION REGARDING ORDINANCE

## CONTENTS OF ORDINANCE

BILL NO.	D-72-12-33
ORDINANCE NO.	A-93-72
REGULAR SESSION	12-12-72
SPECIAL SESSION	
APPROVED AS TO FORM AND LEGALITY	Keller
BILL WRITTEN BY	Bob of Putte Work
DATE INTRODUCED	12-12-72
REFERRED TO SAID STANDING COMMITTEE	Moses Putte Work
REFERRED TO CITY PLAN	
LEGAL PUBLIC HEARING	
LEGAL PUBLICATION	
JOINT HEARING	
DEPARTMENT HEARING	
HOLD FILE	
X PASS	12-12-72
DO NOT PASS	
WITHDRAWN	
X SUSPENSION OF RULES	
PRIOR APPROVAL	
ORDINANCE TAKEN OUT OF OFFICE	
OTHER INSTRUCTIONS REGARDING ORDINANCE	
CORRECTIONS MADE TO ORDINANCE	
PEOPLE SPEAKING FOR ORDINANCE	
PEOPLE SPEAKING AGAINST ORDINANCE	

COMMITTEE SHEET
X VOTE SHEET
PURCHASE ORDERS
BIDS
ORDERS, BIDS OR OTHER PAPERS TAKEN OUT AND BY WHOM
LETTER REQUESTING ORDINANCE DRAWN UP BY CITY ATTORNEY
COMMUNICATIONS FROM
ZONING MAPS
Sanitary Sewer extension ABSTRACTS
TITLES
PRIOR APPROVAL LETTER

Digest sheet.

## COUNCILMAN'S VOTE

	AYES	NAYS	ABSENT
BURNS	X		
HINGA		X	
KRAUS	X		
MOSES	X		
NUCKOLS	Y		
D. SCHMIDT	Y		
V. SCHMIDT	Y		
STIER	Y		
TALARICO	X		

COMMENTS: